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VXN GROUP LLC and MIKE MILLER

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MACKENZIE ANNE THOMA, a.k.a.
KENZIE ANNE, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

VXN GROUP LLC, a Delaware
limited liability company; MIKE
MILLER, an individual; and DOES 1
to 100, inclusive,

Defendants.

Case No. **2:23-cv-04901 WLH (AGRx)**

**APPLICATION FOR LEAVE TO
FILE UNDER SEAL EXHIBITS
FROM DEFENDANTS' RENEWED
MOTION FOR SANCTIONS
PURSUANT TO RULE 37(e) AND
THE COURT'S INHERENT POWER**

**APPLICATION FOR LEAVE TO FILE UNDER SEAL THE
TRANSCRIPT OF LARRY LERNER’S DEPOSITION**

Pursuant to the parties Stipulated Protective Order [**Dkt. 92**, at §12.3] and Civil Local Rule 79-5, Defendants VXN Group LLC and Mike Miller (“Defendants”) hereby respectfully apply for leave of Court for an order sealing the various materials and states as follows:

On July 9, 2024, after briefing Plaintiff’s privacy concerns, the Court ordered the parties to “file a stipulation and proposed protective order[.]” [**Dkt. 89**, at 4]. The parties submitted, [**Dkt. 91**], and the Court entered, a Stipulated Protective Order on July 17. [**Dkt. 92**]. It covers “personal identifying information, financial, and/or proprietary information.” *Id.* at § B. the Protective Order allows for the parties to designate material as confidential that is “in documentary form” as well as “testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition[.]” *Id.* at §§ 5.2(a)–(b).

Defendants “may disclose any information or item designated ‘CONFIDENTIAL’” to, *inter alia*, “the court and its personnel[.]” [**Dkt. 92**, at § 7.2(d)]. “A party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.” *Id.* at § 12.3. When “someone else has designated these documents as confidential pursuant to a protective order,” L.R. 79-5.2.2, a specific procedure applies. *See also id.* 79-5.2.2(a)(1) (“That the information may have been designated confidential pursuant to a protective order is not sufficient justification for filing under seal[.]”).

At least 3 days before seeking to file under seal a document containing information previously designated as confidential by another pursuant to a protective order, the Filing Party must confer with the person that designated the material confidential (the “Designating Party”) in an

attempt to eliminate or minimize the need for filing under seal by means of redaction. If the document cannot be suitably redacted by agreement, the Filing Party may file an Application pursuant to subsection (a), but the supporting declaration must identify the material previously designated as confidential, as well as the Designating Party, and must describe in detail the efforts made to resolve the issue.

L.R. 79-5.2.2(b).

On October 31, 2024, counsel for the parties conferred on the confidentiality status of several documents, and Plaintiff did not oppose filing those materials under seal. Namely, the deposition transcript of Larry Lerner, which Plaintiff deemed confidential in its entirety, and the two sets of texts messages designated as “confidential” by Plaintiff. Thus, Defendants seek leave to file the following materials under seal in support of its (Renewed) Motion for Sanctions pursuant to Rule 37(e) and the Court’s Inherent Power.

Description	Produced By	Status	Exhibit
Murphy-Plaintiff Text Messages	Murphy	Confidential	Ex. E
Supplemental Text Messages	Murphy	Confidential	Ex. H
Lerner Deposition Transcript	N/A	Confidential	Ex. R

Accordingly, Defendants respectfully request that the Court grant it leave to file the above-listed documents under seal.

Dated: January 24, 2025

Respectfully submitted,
KANE LAW FIRM

By: /s/ Brad S. Kane

Brad Kane
Trey Brown
Attorneys for Defendants
VXN Group LLC and Mike Miller

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CERTIFICATION OF CONFERRAL

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on October 31, 2024.

By: /s/ Brad S. Kane

Brad Kane

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